

3 | UNITED STATES BANKRUPTCY COURT

3 | SOUTHERN DISTRICT OF NEW YORK

4 Case No. 12-12020-mg

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6 | In the Matter of:

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8 | RESIDENTIAL CAPITAL, LLC, et al.,

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Debtors.

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2 Status Conference Regarding Trust's Objection to Claim Number
3 452 Filed by Julio Pichardo.

4

5 (Doc# 8452) Case Management Conference Regarding Claims Numbers
6 5610, 5612 Filed by Richard D. Rode.

7

8 (Doc# 9124, 8315) Case Management and Scheduling Conference
9 Regarding Claim No. 725 Filed by William J. Futrell.

10

11 Status Conference Regarding UCL Claim (Tia Smith).

12

13 Status Conference Regarding Claim of Rhonda Gosselin.

14

15 Conference Regarding Status Letter Filed on October 9th at
16 5:00 PM.

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19

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. We're here
3 in Residential Capital, number 12-12020.

4 MS. RICHARDS: Good morning, Your Honor. Erica
5 Richards of Morrison & Foerster, appearing on behalf of the
6 ResCap Borrower Claims Trust.

7 THE COURT: Good morning.

8 MS. RICHARDS: Do you have a copy of the agenda --

9 THE COURT: I do.

10 MS. RICHARDS: -- with you? Okay. So the first
11 matter going forward today begins on bottom of page 8 of the
12 agenda, and that is a case-management conference on the
13 Borrower Trust's objection to proof of claim number 452 filed
14 by Mr. Julio Pichardo. I understand that Mr. Pichardo is on
15 the phone.

16 THE COURT: Mr. Pichardo, are you on the phone?

17 MR. PICHARDO: Yes, Your Honor. Good morning.

18 THE COURT: Good morning, Mr. Pichardo.

19 MR. PICHARDO: Julio Pichardo. Yes.

20 THE COURT: Go ahead.

21 MS. RICHARDS: As Your Honor may recall, on August 4th
22 you entered an opinion and order sustaining in part, and
23 overruling without prejudice in part, the trust's objection to
24 Mr. Pichardo's claims.

25 THE COURT: Right.

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1 MS. RICHARDS: On September 21st you held a status
2 conference with the parties, for the purpose of clarifying that
3 order and its effect, and you issued a scheduling order
4 directing the parties to meet and confer regarding the schedule
5 going forward. We have done that. On October 9th we filed a
6 status report advising the Court where the matter stands. At
7 this point that status report is still current. The parties
8 are continuing to engage in settlement discussions, but at this
9 point the matter is not resolved.

10 In the meantime, we prepared a scheduling order based
11 on the Court's template and provided it to Mr. Pichardo; we
12 took into account the Court's instruction that we be
13 considerate of Mr. Pichardo's health issues.

14 THE COURT: Yes.

15 MR. PICHARDO: There are also intervening holidays
16 coming up. So we haven't heard from Mr. -- Mr. Pichardo has
17 not indicated that he objects to the schedule we set, which
18 would provide for sixty days for fact discovery. If entered
19 today, that would put the close of fact discovery at December
20 14th. We propose forty-five days for expert discovery. And in
21 this case we understand Mr. Pichardo intends to submit medical
22 evidence, so we believe an expert might be required here. That
23 would put the close of expert discovery at around January 28th.
24 And then we propose thirty days to prepare the joint pretrial
25 order, which would be due, then, around February 29th. So we

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1 would be seeking a trial in March, depending on the Court's
2 schedule.

3 THE COURT: Mr. Pichardo, let me hear from you.

4 MR. PICHARDO: Your Honor, I had received something
5 from counsel but they're all blank dates. I'm just waiting on
6 the response from them, because they said they were going to
7 respond early this week concerning the settlement proposal;
8 I've been waiting on that. And I have no dates or anything;
9 all is in blank until now that I hear it from counsel.

10 My proposal was simply just on the three percent of a
11 claim amount. And I also had a question to Your Honor
12 concerning the distribution, because apparently they suggested
13 a onetime payment if I reduced this further to barely under two
14 percent of the claim amount. And should it be considered, the
15 request that I'm making for settlement amount, it would be on
16 the distribution and that there has been no distribution on
17 this case whatsoever. And I was concerned and I had a question
18 to Court (sic) whether there has been distribution in these
19 cases.

20 THE COURT: Well, I can tell you this: there has not
21 been a distribution to the borrower claimants --

22 MR. PICHARDO: Okay.

23 THE COURT: -- and that's because the -- there's a
24 fixed amount available for all borrower claimants with allowed
25 claims, and there are still -- while the number of unresolved

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1 claims is substantially decreased, they're still not all
2 resolved. So there has not been a distribution yet. I can't
3 tell you when a distribution would be made.

4 I guess my observation would be the following: I do
5 want to enter a scheduling order and move this matter along to
6 trial, if that's what is going to be required. It's
7 important --

8 MR. PICHARDO: Right.

9 THE COURT: -- not only for you but it's important for
10 all other borrower claimants as well --

11 MR. PICHARDO: Right.

12 THE COURT: -- that the amount of allowed claims be
13 fixed, preferably by settlement but, if not by settlement, then
14 by trial.

15 MR. PICHARDO: Right.

16 THE COURT: And because I have to be the trier of fact
17 if the matter goes to trial, I don't get involved in settlement
18 discussions between the trust and borrowers --

19 MR. PICHARDO: I understand.

20 THE COURT: -- okay, because if I -- I just can't do
21 that, because --

22 MR. PICHARDO: Right.

23 THE COURT: -- if it goes to trial, I've got to
24 decide -- I've got to decide, based on the facts and the law,
25 who prevails and, if you prevail, how much.

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1 MR. PICHARDO: Right.

2 THE COURT: So let me ask you -- Ms. Richards has
3 proposed sixty days for fact discovery. Based on my prior
4 decision, it seems to me that the factual issues between you
5 and the trust are fairly narrow in that sixty days is
6 sufficient time to do that. If you're going to put in medical
7 testimony, that would be expert testimony. The forty-five days
8 is the period of time that I usually permit, in all cases, for
9 expert discovery and then thirty days thereafter for a joint
10 pretrial-conference order.

11 Whenever I have a trial, Mr. Pichardo --

12 MR. PICHARDO: Um-hum.

13 THE COURT: -- I require the parties, whether it's
14 pro se or with a lawyer, to prepare a joint pretrial-conference
15 order. Ms. Richards can send you -- I have a form that I use
16 for those; it appears --

17 MR. PICHARDO: Okay.

18 THE COURT: -- on the Court's Web site, under my
19 chambers' rules, but I'll ask Ms. Richards to arrange to get
20 you a copy. I don't know whether they have your e-mail
21 address. They do.

22 MR. PICHARDO: Yes, they do.

23 THE COURT: She's shaking (sic) yes.

24 She can e-mail you a copy so you'll understand what
25 has to go into a pretrial-conference order.

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1 MR. PICHARDO: Okay.

2 THE COURT: May I ask, do you have a problem with the
3 sixty days for fact discovery, forty-five days for expert
4 discovery, and thirty --

5 MR. PICHARDO: No, I don't, Your --

6 THE COURT: Okay.

7 MR. PICHARDO: -- Your Honor.

8 THE COURT: So I'll enter that order. Let me look at
9 my calendar and try and see what trial dates are available, and
10 I will at least tentatively schedule that as well.

11 (Pause)

12 THE COURT: Just bear with me a minute; I have to look
13 at two different calendars.

14 (Pause)

15 THE COURT: Ms. Richards, based on what you know about
16 this claim at this point, do you have an estimate of how long
17 you think it will take, the trial?

18 MS. RICHARDS: Think it will depend a little bit on
19 how the evidence comes in.

20 THE COURT: I'm sure, but --

21 MS. RICHARDS: I'm hopeful two days should be plenty
22 of time.

23 THE COURT: Okay. I'm going to tentatively set the
24 trial for March 10 and 11, 2016.

25 Mr. Pichardo, that's a Thursday and a Friday.

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1 MR. PICHARDO: Okay.

2 THE COURT: And, Mr. Pichardo, remind me where you
3 live.

4 MR. PICHARDO: In California.

5 THE COURT: Yeah. So I want to be clear that for
6 trial I try -- whenever we have these hearings like this, I try
7 to do by telephone so that -- either for lawyers or for parties
8 who are outside the New York Metropolitan area, that they can
9 participate by phone. But for trials, you actually -- you have
10 to be here.

11 MR. PICHARDO: Okay.

12 THE COURT: We can't do trials by telephone.

13 MR. PICHARDO: I understand. I will be present, or my
14 counsel --

15 THE COURT: Okay.

16 MR. PICHARDO: -- or representative. I will advise
17 when this happens.

18 THE COURT: So, Ms. Richards, prepare a proposed --
19 prepare a case-management and scheduling order in the usual
20 form, make sure Mr. Pichardo gets a copy of it with the dates
21 that you've given. Put the actual date, as opposed to the
22 sixty days, forty-five days, et cetera. It'll get entered
23 today if I receive it today.

24 MS. RICHARDS: Great. We will do that, Your Honor.

25 THE COURT: And put those trial dates of March 10 and

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1 11, 2016.

2 And look, Mr. Pichardo, I hope you're able to get this
3 resolved by settlement.

4 MR. PICHARDO: I am trying my best, Your Honor.

5 THE COURT: Okay.

6 MR. PICHARDO: I have come to very reasonable and
7 to -- very close to what they've --

8 THE COURT: Okay.

9 MR. PICHARDO: -- suggested, but I was awaiting a
10 response because they wanted to get a response from their
11 client.

12 THE COURT: That's fine.

13 MR. PICHARDO: I did not get it.

14 THE COURT: That's fine.

15 MR. PICHARDO: So I needed to get a response.

16 THE COURT: Okay. You'll talk with him further and
17 hopefully you'll get it resolved; if not, we'll go forward and
18 have a trial. Be mindful --

19 MR. PICHARDO: Right.

20 THE COURT: Be mindful of the discovery period if
21 you're going to try and take any discovery, okay?

22 MR. PICHARDO: Sure.

23 THE COURT: Okay, thanks very much, Mr. Pichardo.

24 MR. PICHARDO: I appreciate it. Thank you.

25 THE COURT: Okay. You're excused. You can remain on

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1 the phone if you wish, but you can also disconnect if you wish.

2 MR. PICHARDO: Okay. Thank you.

3 THE COURT: Okay.

4 MR. PICHARDO: Take care, now --

5 THE COURT: Thanks very much.

6 MR. PICHARDO: -- to everyone.

7 THE COURT: Thanks, Ms. Richards.

8 MS. RICHARDS: Thank you, Your Honor. That brings us
9 to the next item on the agenda, which is item 5 found on page
10 10, and that is a case-management conference on the Borrower
11 Claims Trust's objection to two proofs of claim filed by
12 Richard Rode. I understand Mr. Rode is also on the phone
13 today.

14 THE COURT: Mr. Rode, are you on the phone?

15 MR. RODE: Yes, Your Honor, I am.

16 THE COURT: Good morning. Good morning.

17 MR. RODE: Good morning.

18 THE COURT: All right, Ms. Richards, go ahead.

19 MS. RICHARDS: Sure. Your Honor will recall that on
20 May 14th, 2015 you held a hearing on the trust's objection to
21 Mr. Rode's proofs of claim. Following that hearing, I directed
22 the parties to meet and confer regarding potential settlement.
23 We did so at length, but ultimately those discussions were
24 unproductive. And on July 13th the Borrower Trust filed a
25 letter requesting that you go ahead and enter judgment. You

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1 entered a memorandum opinion and order on September 2nd, which
2 directed us to schedule today's case-management conference.

3 THE COURT: All right. Let me just --

4 MS. RICHARDS: I would also note, Your Honor, that
5 yesterday Mr. Rode filed some -- he'll have the opportunity to
6 tell you, but he filed on the docket a notice of attention
7 (sic) -- intention to appear telephonically today, and his
8 intention to retain counsel.

9 THE COURT: Okay. Go ahead, Mr. Rode; let me hear
10 from you at this point.

11 MR. RODE: Yes. I -- we have been in negotiations but
12 it really has not been very productive at all. I did receive a
13 notice from Ms. Richards on the 13th with an offer, and -- I'm
14 sorry, it may have been a couple days before that. But I still
15 would like to pursue a settlement in this case, as you had
16 recommended, but at this point I felt like we weren't even
17 close and that, if I needed to, I needed to retain an attorney
18 to at least do the negotiating for me.

19 THE COURT: And have you retained an attorney at this
20 point?

21 MR. RODE: Yes, I have.

22 THE COURT: Okay. Has he or she made an appearance in
23 the case at this point?

24 MR. RODE: No, I -- that's one of the reasons that I
25 wanted to appear today was to recommend that I be able to at

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1 least put this off until maybe the next amicus hearing in
2 November, in order to, number one, be able to settle this
3 beforehand or, number two, be able to update and have my lawyer
4 present whatever filing she needs to file with the New York
5 court.

6 THE COURT: Ms. Richards, remind me what the issues
7 that remain open -- because I sustained in part and overruled
8 in part the trustee's objection.

9 MS. RICHARDS: You did, Your Honor. The objection was
10 sustained in all respects except with respect to Mr. Rode's
11 claim for breach of contract.

12 THE COURT: What I'm going to do, I will put this off
13 to the next -- do we have a date in November? I don't know
14 what --

15 MS. RICHARDS: November 18th is the next --

16 MR. RODE: I believe it's the 18th.

17 THE COURT: Okay. So let's put it off. We'll
18 continue this matter until the 18th.

19 But, Mr. Rode, you need to have your counsel get in
20 touch with Ms. Richards. I certainly encourage you to continue
21 to try and pursue settlement but, if that's unsuccessful, we
22 got to go ahead and schedule -- come up with a -- you ought
23 to -- your counsel needs to confirm with Ms. Richards about a
24 scheduling order, so --

25 MR. RODE: Yes, Your Honor.

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1 THE COURT: -- with any dates that need to be included
2 in it. If your counsel speaks with Ms. Richards, I'm sure she
3 can let him know my usual form scheduling order, which does
4 appear on the court Web site in any event. And we'll try and
5 come up with a schedule so we can get this resolved; I'm sure
6 you want to do that, and then the trust needs to do that as
7 well.

8 MR. RODE: Absolutely. And yes, I will make sure that
9 he contacts her within the next two days.

10 THE COURT: Thank you very much.

11 That satisfactory, Ms. Richards?

12 MS. RICHARDS: It is. Thank you, Your Honor.

13 THE COURT: Okay.

14 Thanks, Mr. Rode. You can remain on, or you're
15 excused if you wish.

16 MR. RODE: Thank you, Your Honor. Bye.

17 MR. NEWTON: Good morning, Your Honor. James Newton
18 of Morrison & Foerster, on behalf of the ResCap Borrower Claims
19 Trust.

20 THE COURT: Good morning, Mr. Newton.

21 MR. NEWTON: Good morning. The next item on the
22 agenda is a status conference relating to the Borrower Trust's
23 objection to proof of claim number 725, filed by William
24 Futrell. I believe Mr. Futrell's counsel, Mr. Margolis, is on
25 the phone.

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1 THE COURT: Mr. Margolis --

2 MR. MARGOLIS: Yes.

3 THE COURT: -- are you on the phone?

4 MR. MARGOLIS: Yes.

5 THE COURT: Thank --

6 MR. MARGOLIS: Yes. Thank you.

7 THE COURT: Okay. Thank you very much.

8 Go ahead, Mr. Newton.

9 MR. NEWTON: Your Honor, you issued a memorandum
10 opinion and order in connection with the Borrower Trust's
11 objection to Mr. Futrell's claim, on July 14, 2015; that's
12 docket number 8887. The memorandum opinion and order sustained
13 the Borrower Trust's objection as to all claims asserted in
14 Mr. Futrell's proof of claim. Aside from RESPA-qualified
15 written-request claims relating to five purported qualified
16 written requests --

17 THE COURT: Yes, October 30th, 2009, October 31st,
18 2009, November 13th, 2009, December 2009, October 23rd, 2011.

19 MR. NEWTON: Correct. And we were here last for a
20 status conference on August 20th, and thereafter Your Honor
21 entered a case-management scheduling order on September 9,
22 2015; it's docket number 9124. Consistent with that case-
23 management order, we've spoken with Mr. Margolis, and the
24 parties have agreed that no expert testimony will be required
25 in connection with this matter.

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1 THE COURT: Okay.

2 MR. NEWTON: And the parties have also served and
3 responded to discovery during the fact-discovery period, which
4 was set to expire on October 12th, 2015.

5 Your Honor, with respect to the Borrower Trust
6 discovery requests, we served document requests,
7 interrogatories, and requests for admissions on Mr. Futrell's
8 counsel on September 10, 2015, and received responses to our
9 discovery requests. Mr. Margolis also filed a motion seeking
10 to limit the scope of the Borrower Trust's discovery requests.
11 We spoke with Mr. Margolis last week and understand that he
12 does not intend to pursue that motion at this time. We'd asked
13 him to withdraw the motion, given the close of discovery and
14 his intention not to pursue the motion, but I believe it is
15 still pending on the docket.

16 THE COURT: Okay, Mr. Margolis, you want to address
17 that?

18 MR. MARGOLIS: At this point I concur with what
19 counsel are saying and I guess I would make the oral motion
20 that it be withdrawn.

21 THE COURT: Okay, it's withdrawn. Thank you very
22 much, Mr. Margolis.

23 MR. NEWTON: Your Honor, we also received documents
24 responsive to some, but not all, of our document requests.
25 Mr. Margolis has informed me that he's still attempting to

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1 locate responsive documents, despite the close of fact
2 discovery earlier this week.

3 THE COURT: You know, sometimes there's always a few
4 straggling documents that sometimes -- as long as a good-faith
5 effort is made to get them and it doesn't happen on the eve of
6 any trial, I'll leave it to you to work it out.

7 MR. NEWTON: Right. Your Honor, Mr. Futrell also
8 served a request for admissions on the Borrower Trust, dated
9 September 22nd; we served responses to those earlier this week,
10 as well, ahead of the close of fact discovery.

11 Your Honor, we will continue to work out the
12 discovery -- the document issues with Mr. Margolis, but we do
13 remain a little concerned given the impending deadline to
14 submit a pretrial order in this matter, which is currently
15 scheduled for November 12th. While Your Honor's form of
16 pretrial order limits the use of exhibits that aren't disclosed
17 in that order, we want to make sure that we have the documents,
18 with ample time --

19 THE COURT: Yes.

20 MR. NEWTON: -- in order to work with Mr. Margolis.

21 THE COURT: Well, what's the category -- what
22 documents are you still waiting for?

23 MR. NEWTON: So there are some causation issues and
24 various categories of alleged damages that are going to be the
25 focal point of any evidentiary hearing. With respect to the

1 causation issues, we received very few documents related to
2 those issues. And with respect to the categories of alleged
3 damages, there are certain categories where we received no
4 documents relating to --

5 THE COURT: Well, sometimes there are no documents,
6 but there isn't always a document for everything, Mr. Newton.

7 MR. NEWTON: Understood. And if that's the case, then
8 that's fine.

9 THE COURT: I think what --

10 Mr. Margolis, the one thing I can absolutely assure
11 you of, you won't get to use any document that you haven't
12 produced. And you need to make a very diligent effort to
13 assemble whatever documents exist. But you simply are not
14 going to get to use a document that you haven't produced in
15 response to a proper request.

16 MR. MARGOLIS: I understand that, Judge, and at this
17 point what I can represent to the Court is that a request was
18 made to the holder of the documents and they haven't indicated
19 there are documents at this time. So -- but I've asked.

20 THE COURT: Okay. So, please be diligent in trying to
21 get it and --

22 MR. MARGOLIS: Yes.

23 THE COURT: My goal is that both sides in a trial have
24 a fair opportunity to present their claims and defenses, nobody
25 holds back anything in discovery, and the pretrial order really

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1 needs to be thoroughly completed, list all exhibits for each
2 side, define what the issues are that are going to be tried,
3 et cetera, because it's the most efficient way for me to go
4 ahead and conduct a trial.

5 Mr. Newton, push ahead. I mean, you ought to be able
6 to prepare a draft of a pretrial order even if there are a
7 couple of issues that sort of are hanging, until you get
8 confirmation whether there are or are not documents.

9 MR. NEWTON: We agree, Your Honor, and we will --

10 THE COURT: How long a trial do you anticipate?

11 MR. NEWTON: I haven't spoken with Mr. Margolis about
12 that. We were conferring a few minutes earlier. I expect
13 probably a day.

14 THE COURT: Mr. Margolis, do you agree with that?

15 MR. MARGOLIS: I would agree.

16 THE COURT: Okay. Where are you located,
17 Mr. Margolis?

18 MR. MARGOLIS: In Indiana.

19 THE COURT: Okay. Let me see if I can come up with a
20 tentative trial date. The bankruptcy courts, along with the
21 district courts, had the vanishing trial, but I suddenly find
22 myself with quite a full trial schedule. But for a one-day
23 trial, I want to see whether -- see what we can come up with.

24 (Pause)

25 THE COURT: Tuesday, January 26, 2016. I scheduled it

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1 for a Tuesday, Mr. Margolis, so -- I mean, I'm available on the
2 25th, on a Monday, but I assume you -- so you don't have to
3 travel on the weekend.

4 MR. MARGOLIS: Okay.

5 THE COURT: Would you be available on January 26;
6 Tuesday the 26th?

7 MR. MARGOLIS: If I have to be, yes.

8 THE COURT: Okay. Well, that's the trial date. My
9 courtroom deputy will schedule it. You ought to continue to
10 try and see whether you can reach a settlement with the trust;
11 obviously if you do, either you or Mr. Newton or both will
12 inform the Court. My trial dates are getting scarce at this
13 point and I'm trying to fill as much as possible, as soon as
14 possible.

15 So that'll be the trial date. I'm not going to enter
16 a separate order now. Include that in the joint pretrial
17 conference order. We will put on the Court's calendar that as
18 the trial date, okay?

19 MR. NEWTON: Okay. We will do that.

20 THE COURT: And --

21 MR. MARGOLIS: Yes. Thank you.

22 THE COURT: Mr. Margolis -- I'm sure Mr. Newton can
23 explain this if he hasn't -- typically what I try to have done
24 is that the direct testimony of any witness within the control
25 of either side be presented by written declaration, with the

1 declarant in court and available for cross-examination. The
2 exception's, if one side or the other insists that the other
3 side's witness give live testimony, I'll consider it. That
4 usually only happens in denial of discharge, adversary
5 proceedings, quite frankly, where credibility is sort of the
6 central issue.

7 I find, one, it speeds the trial. It also, frankly,
8 helps counsel, because they know exactly what they're going to
9 cross-examine in court, because they know what the testimony
10 is; they don't have to wait to hear it.

11 So you should talk with Mr. Newton about that. And if
12 you both agree on that, agree on the date on which the direct
13 testimony, declarations'll be exchanged between the parties in
14 advance of trial and with the Court. Where there's direct
15 testimony in declaration form, I have always read it before the
16 trial begins. So you would offer the testimony of your witness
17 at trial, for whom I have the declaration, and then the witness
18 would take the witness stand for cross-examination. So that's
19 generally how I try to conduct trials. It provides better
20 certainty to each side, what's the testimony going to be, how
21 do I deal with -- then of course you can have a redirect; I
22 don't preclude that. But you know exactly what you're going to
23 cross-examine.

24 So, talk with Mr. Newton about that. It helps --
25 particularly with a one-day trial, it helps speed the trial

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1 along. And I will -- if the parties want, I will hear short
2 opening statements and then closing argument. And I do -- I'm
3 sure Mr. Newton can tell you, I do want pretrial memoranda of
4 law that set out the likely testimony and the elements of the
5 claims and defenses. Okay?

6 MR. MARGOLIS: Yes.

7 THE COURT: Thanks very much, Mr. Margolis.

8 Anything else on this one, Mr. Newton?

9 MR. NEWTON: No, Your Honor.

10 THE COURT: Mr. Margolis, anything you want to add?

11 MR. MARGOLIS: Nothing else.

12 THE COURT: Okay. All right, you're excused or you
13 can stay on; it's up to you.

14 MR. NEWTON: Cede the podium to Mr. --

15 MR. MARGOLIS: Thank you, Judge.

16 THE COURT: Okay. Thanks very much.

17 MR. WISHNEW: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. WISHNEW: Jordan Wishnew, Morrison & Foerster, for
20 the ResCap Borrower Claims Trust.

21 Next on today's agenda is item 7 on page 11, the
22 status conference concerning the ResCap Borrower Claims Trust's
23 sixty-ninth omnibus objection as it relates to four claims
24 filed by Ms. Tia Smith, claim numbers 3889, 4129, 4134 and
25 4139. I believe Ms. Smith is on the phone.

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1 THE COURT: Ms. Smith, are you on the phone?

2 MS. SMITH: Yes, Your Honor, I am. Good morning.

3 THE COURT: Good morning, Ms. Smith.

4 Go ahead, Mr. Wishnew.

5 MR. WISHNEW: Thank you, Your Honor. Your Honor,
6 originally the Court entered a memorandum opinion and order
7 sustaining in part and overruling in part the Borrower Claims
8 Trust's objection, on October 1st, 2014. That objection and
9 the Court's memorandum opinion sustained substantially all of
10 the trust's objections, with the exception of the cause of
11 action related to California's Unfair Competition Law.

12 THE COURT: Right. The allegation was that Ms. Smith
13 was told by a Homecomings employee to skip payments.

14 MR. WISHNEW: Exactly, Your Honor.

15 THE COURT: Right.

16 MR. WISHNEW: Ms. Smith sought reconsideration of the
17 Court's opinion. The Court entered its order denying the
18 motion for reconsideration, on November 24th, 2014. Ms. Smith
19 then appealed the matter to the Southern District of New York.

20 THE COURT: And Judge Sullivan dismissed the appeal --

21 MR. WISHNEW: As --

22 THE COURT: -- because it was an interlocutory order.

23 MR. WISHNEW: Exactly, Your Honor.

24 THE COURT: Right.

25 MR. WISHNEW: So to try and move this matter forward

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1 as it relates to the UCL claim, we ask that it be put back on
2 today's agenda, to allow the parties to address the matter and
3 try and work out the most expeditious way for bringing this to
4 a conclusion.

5 THE COURT: Right. Is there any discovery that the
6 trust wishes to take?

7 MR. WISHNEW: Yes, Your Honor. We would like to take
8 evidence -- or take discovery of Ms. Smith as to the proof she
9 has to substantiate her allegations that there was a
10 representation made by the Homecomings employee back in 2007.

11 THE COURT: How much time do you believe you need for
12 discovery?

13 MR. WISHNEW: I would say no more than sixty days,
14 Your Honor.

15 THE COURT: All right.

16 Ms. Smith, what discovery do you wish to take?

17 MS. SMITH: I'm not quite certain, Your Honor. I
18 haven't had an opportunity to research exactly what I'm going
19 to need. I am in pro per and I'm actually dealing with three
20 other actions related to this matter, so I'm kind of
21 overwhelmed right now. But I just got notice from the
22 attorney, I guess on Friday, that this hearing was taking
23 place, so I haven't really had a chance to gather all the --
24 everything, what I need.

25 THE COURT: Okay. So the issue, as I understand --

1 the factual issue, as I understand it, and this was covered at
2 page 27 of the opinion, that "[i]n November 2007, a Homecomings
3 employee allegedly instructed Smith to skip making mortgage
4 payments in order to qualify for a loan modification. This
5 practice, if true, would likely deceive consumers because it
6 would lead them to believe that a necessary condition for
7 obtaining a loan modification is to default on their mortgages.
8 The Trust maintains that Smith never received this advice from
9 a Homecomings employee. Indeed, the Trust submitted its
10 servicing notes to support its assertion that there is no
11 evidence that a call between Smith and Homecomings took place
12 in November 2007. The Court concludes there are disputed
13 issues of fact whether Smith was instructed that she has to
14 default on her loan to qualify for a loan modification. That
15 cannot be resolved without an evidentiary hearing."

16 So that's the issue as to which -- it's a fairly
17 narrow issue of fact --

18 MR. WISHNEW: Correct, Your Honor.

19 THE COURT: -- as to which the Court concluded that I
20 need an evidentiary hearing, Ms. Smith.

21 So, Mr. Wishnew, you've served discovery, is that what
22 you're telling me?

23 MR. WISHNEW: We did not yet serve discovery, Your
24 Honor.

25 THE COURT: When are you going to serve your

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1 discovery?

2 MR. WISHNEW: We can probably serve it within a week.

3 THE COURT: Okay. All right, Mr. Wishnew, prepare a
4 scheduling order setting sixty days for fact discovery. This
5 doesn't strike me as the kind of case where an expert is going
6 to be needed.

7 MR. WISHNEW: No, Your Honor.

8 THE COURT: Okay. Provide sixty days for fact
9 discovery, thirty days for preparation of a joint pretrial-
10 conference order. And this also strikes me as a one-day trial;
11 it's a fairly narrow factual issue.

12 MR. WISHNEW: I agree, Your Honor.

13 THE COURT: I think that, assuming that the
14 Homecomings employee made the representations that Ms. Smith
15 said, there'll also be the issue of damages that'll have to be
16 addressed.

17 MR. WISHNEW: Correct, Your Honor.

18 THE COURT: And I want to be sure that --

19 Ms. Smith, I assume that the trust is going to want to
20 get some discovery from you regarding the damages that you
21 believe you've suffered as a result. What I will do is I'm
22 going to hold off in scheduling a trial date at this point but,
23 Ms. Smith, I try as best as I can to schedule trials quite
24 promptly. So with sixty days for fact discovery --

25 Make sure the dates fall on a weekday, because I think

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1 sixty days falls on a weekend.

2 MR. WISHNEW: Okay.

3 THE COURT: The pretrial order is going to be due
4 roughly around January 13th. You'll figure out the dates and
5 talk to Ms. Smith about it so she clearly understands what the
6 dates are.

7 MR. WISHNEW: Yep.

8 THE COURT: I would expect, Ms. Smith, that --
9 Ms. Smith, you live in California?

10 MS. SMITH: I do, Your Honor.

11 THE COURT: Okay. Well, I'm going to tentatively
12 schedule a trial for Tuesday, February 9th, 2016.

13 MR. WISHNEW: Okay.

14 THE COURT: It'll give you time to plan, Ms. Smith.
15 And you may have heard me tell the lawyer in the last case that
16 you have to be here for trial; you can't do it by telephone.
17 So I've scheduled it on a Tuesday to allow you to travel on
18 Monday if that's what you choose to do, rather than over the
19 weekend.

20 MS. SMITH: That's a point.

21 THE COURT: But you'll talk to Mr. Wishnew or one of
22 his colleagues. And I encourage you to continue to try and
23 discuss settlement. And frequently the best settlements are
24 one that neither side is entirely happy with. I don't get
25 involved in settlement because, if it goes to trial, I have to

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1 be the one to decide the facts and apply the law. So I won't
2 get involved in the settlement discussions. But I encourage
3 you to do that.

4 So, Mr. Wishnew, provide the Court with a scheduling
5 order that has sixty days for fact discovery, no period for
6 expert discovery, thirty days for preparing a joint pretrial-
7 conference order, and trial scheduled for Tuesday, February 9th
8 of 2016, beginning at 9 a.m.

9 MR. WISHNEW: Will do, Your Honor.

10 THE COURT: Okay. Thank you very much, Ms. Smith.
11 You have any other questions or anything you want to raise?

12 MS. SMITH: No, Your Honor. Thank you.

13 THE COURT: Thank you very much. You're excused or
14 you can remain on; whichever you choose.

15 MS. SMITH: Thank you.

16 THE COURT: Okay.

17 MR. WISHNEW: Thank you, Your Honor. Next matter is
18 item 8 on page 13 of today's agenda, concerning the Borrower
19 Claims Trust's objection to that of -- to claim 3862 filed by
20 Rhonda Gosselin. And the reason this conference was scheduled
21 for today --

22 THE COURT: Is Ms. Gosselin on the phone?

23 Ms. Gosselin, are you on the phone?

24 Go ahead, Mr. Wishnew.

25 MR. WISHNEW: Thank you, Your Honor. This matter was

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1 put on today's calendar because we were before Your Honor
2 previously and there was a scheduling order set for --

3 THE COURT: Ms. Gosselin got notice of this hearing?

4 MR. WISHNEW: Yes.

5 THE COURT: Okay.

6 MR. WISHNEW: But at the same time, we also received
7 notice, within the past week or so, that her attorney, Lehr
8 Heele (ph.) --

9 THE COURT: Yes.

10 MR. WISHNEW: -- has been placed on disability
11 inactive status in the Commonwealth of Massachusetts. So,
12 right now we have a bit of a pickle in that Ms. Gosselin's
13 represented by counsel but counsel is now technically inactive
14 and cannot represent her in this matter; and that, I
15 understand, is effective as of September 9th, 2015.

16 So we had discovery out to Mr. Heele on Ms. Gosselin's
17 behalf; that discovery went -- we did not get any responses to
18 that discovery. We're obviously eager to move forward but we
19 recognize that -- with Mr. Heele's disability, that we have to
20 kind of reengage Ms. Gosselin at this point and work through
21 it.

22 THE COURT: Have you been able to speak with
23 Mr. Heele?

24 MR. WISHNEW: Only by e-mail, Your Honor, and that's
25 been periodic at best.

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1 THE COURT: Obviously he's still representing
2 Ms. Gosselin, so you can't communicate with her directly
3 without his consent.

4 MR. WISHNEW: Yeah, I'll note for the record, Your
5 Honor, that the notice we did receive from the Board of Bar
6 Overseers of the Supreme Court. Supreme Judicial Court for the
7 Commonwealth of Massachusetts says that "[you] are hereby
8 advised I have been placed on disability inactive status in the
9 Commonwealth of Massachusetts and consequently am disqualified
10 from acting as an attorney after September 9, 2015, the
11 effective date of disability."

12 I also am being told in real time that he filed a
13 withdrawal today of his appearance. So I think we could
14 probably reach out to Ms. Gosselin --

15 THE COURT: If he's filed a --

16 MR. WISHNEW: -- at this point.

17 THE COURT: -- withdrawal of his appearance, you can,
18 in my view, talk directly with Ms. Gosselin. Be sensitive to
19 the fact that she's had an attorney until now; and --

20 MR. WISHNEW: Absolutely.

21 THE COURT: -- I'm sure you will be; I don't have
22 any --

23 MR. WISHNEW: Absolutely.

24 THE COURT: -- question about that.

25 MR. WISHNEW: Yeah.

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1 THE COURT: I think you need to reach out to her and
2 we need to find a way to move the matter forward, in fairness
3 to her. It's not her doing that Mr. Heele is in inactive
4 status because of disability.

5 MR. WISHNEW: Yep.

6 THE COURT: So let's put this on the November --

7 MR. WISHNEW: Okay.

8 THE COURT: -- calendar. Make sure that she's aware
9 that she needs to appear by telephone.

10 MR. WISHNEW: Very good.

11 THE COURT: And you ought to encourage her -- I don't
12 know, have there been settlement talks in this matter?

13 MR. WISHNEW: We did not make affirmative offers;
14 rather, based upon the narrow scope of contested issues, we
15 invited Mr. Heele to provide us with a settlement offer, and
16 served discovery seeking damages that'll be proven. Those
17 discovery -- I mean, have not been responded to and we've not
18 got an affirmative number at this point. So we've made efforts
19 but we haven't gotten responses.

20 THE COURT: Okay. I guess what I would ask you to do
21 before we get to the November date, if you have an update on
22 the status --

23 MR. WISHNEW: Sure.

24 THE COURT: -- send the Court a status letter that
25 describes it without -- you don't have to go into too much

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1 detail, but I just want a sense of what's happening.

2 MR. WISHNEW: Absolutely, Your Honor.

3 THE COURT: Okay?

4 MR. WISHNEW: Um-hum.

5 THE COURT: Thanks very much.

6 MR. WISHNEW: Very well. Last matter on today's
7 calendar, Your Honor, is basically an overall status report
8 from the Borrower Claims Trust.

9 THE COURT: Right.

10 MR. WISHNEW: This is item 9 on page 14. On October
11 9th our office docketed a status letter at docket number 9243.

12 THE COURT: And I very much appreciated receiving it.

13 MR. WISHNEW: You're very welcome, Your Honor. I can
14 just give a very -- give a little bit more color --

15 THE COURT: Yeah, please.

16 MR. WISHNEW: -- beyond what's in the letter. So as
17 Your Honor will see, we've made significant progress over the
18 past two years. At this point in time there are approximately
19 232 remaining claims, roughly half of which are convenience-
20 class claims, which are in the face amount of less than 30,000
21 dollars. As noted in footnote 1 to our letter, at this time
22 the Borrower Trust does not anticipate contesting these claims
23 but reserves the right to.

24 Of the 118 nonconvenience claims, the Borrower Trust
25 is pursuing multiple fronts to bring these claims to a rapid

1 conclusion. Twenty-one of those claims are currently subject
2 to omnibus 89, which'll be heard on November 18th. Twenty-five
3 of the 118 claims are the subject of previously filed
4 objections that are not entirely resolved, some of which my
5 colleagues and I have addressed this morning, others of which
6 are currently scheduled for discovery and trial dates.

7 Approximately forty claims are being actively pursued
8 by the Borrower Trust through a settlement-letter campaign. Of
9 those forty, at least twenty percent have been resolved thus
10 far. Ten claims are subject to additional objections that will
11 be filed in the next few weeks by the Borrower Claims Trust.
12 And as it relates to the remaining claims, those are continuing
13 to be evaluated.

14 The Borrower Trust remains cautiously optimistic that
15 it'll make a distribution to holders of allowed claims in the
16 first quarter of 2016; this will depend in large part on the
17 outstanding claims at that point in time and the feasibility of
18 reserving for claims, including those claims on appeal, of
19 which, as I note in the letter, at least twelve claimants have
20 sought appeals of the Court's order expunging their claims in
21 their entirety.

22 So, Your Honor, obviously we've made continued and
23 substantial progress. We are very focused on moving forward
24 expeditiously, bringing this matter to a conclusion as quickly
25 as possible, and sending distributions out at the earliest

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1 possible time.

2 At this point if Your Honor has any questions, I'm
3 happy to answer them.

4 THE COURT: I've scheduled trials in a bunch of those;
5 I don't know the number -- I didn't go back to figure out the
6 number. But that's sort of what's happening now.

7 MR. WISHNEW: Yeah.

8 THE COURT: And you'll excuse me for putting it this
9 way, but you sort of dealt with the low-hanging fruit early on
10 that got harder as we worked through them.

11 MR. WISHNEW: That's a fair statement, Your Honor.
12 It's a fair statement.

13 THE COURT: And, so, many of the contested claims have
14 required considerable amount of work, obviously by your office
15 but also by the Court, then, to resolve them. I actually had
16 reason to look recently and see that in those matters where I'd
17 written opinions, I've had to decide the law of twenty-six
18 states.

19 MR. WISHNEW: I can only say, Your Honor, the efforts
20 of your chambers and your clerks over the past two years has
21 been extraordinary, and we are much appreciative for the
22 dedication --

23 THE COURT: I'm not looking for --

24 MR. WISHNEW: No, I know you're not, Your --

25 THE COURT: Thanks, but it's been -- actually, I knew

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1 there was a lot of state law that we had looked at but, when I
2 saw it was twenty-six -- and of course, states like California
3 and Florida had multiple claims in each of those states. In
4 any event, it's been a lot. I don't know whether -- hopefully
5 there won't be any more different states that I have to deal
6 with. Maybe there will be. But we'll move forward.

7 I guess -- I think I'd observed at the prior hearing,
8 when I asked for the status report, that obviously -- once
9 previously I denied the trust's motion to establish a claim
10 reserve, and it was because there were so many unresolved
11 claims at that point. And you sort of -- I'm saying "you", but
12 your --

13 MR. WISHNEW: Yes. Understand.

14 THE COURT: -- your office sort of pointed to how many
15 successful claim objections you'd had, but that's kind of
16 the -- that was kind of the low-hanging fruit; those were easy
17 to get rid of.

18 But I'm not averse at some point to hearing another
19 claims-reserve motion, provided that it makes a reasonable
20 effort to set the figure of the reserves.

21 MR. WISHNEW: Understood, Your Honor.

22 THE COURT: I'm not suggesting you ought to do that
23 motion in the next month or so, but you can -- look, I'm sure
24 your goal -- my goal is I would like the borrowers to
25 receive -- with allowed claims, to receive distributions --

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1 MR. WISHNEW: Absolutely.

2 THE COURT: -- sooner rather than later, but it's
3 just -- it's not your fault that they've gotten complicated.

4 MR. WISHNEW: I mean -- yeah. Exactly. I mean, where
5 we started out with 3,000 claims, we're down to at this point
6 the nonconvenience claims of 118. So it's the last three to
7 four percent of the borrower claims that are honestly the most
8 challenging; and of those, we're still trying to only bring the
9 most contested and the ones where we're just too far apart with
10 the claimant; those are the ones that we will bring to Your
11 Honor. If we think there's a chance at settlement, we're going
12 to pursue it. But if we just think that the claimant is not
13 pursuing -- is not being reasonable in their position and we're
14 assessing the likelihood of their success at a much lesser
15 degree than what they're valuing the claim, we have no choice
16 but to bring it before Your Honor.

17 THE COURT: You happen to know what the status of the
18 twelve appeals are?

19 MR. WISHNEW: Most of them --

20 THE COURT: I keep getting -- when an order gets
21 entered in the district court in --

22 MR. WISHNEW: Yes.

23 THE COURT: -- in one of my cases, I do receive an --

24 MR. WISHNEW: Yes.

25 THE COURT: -- ECF notice about it. But I haven't

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1 kept close tabs on it. So I don't know how many of them -- how
2 many of the appeals are fully briefed in the district court.

3 MR. WISHNEW: Some of them are fully briefed and we're
4 awaiting either a decision from the court or a request for oral
5 argument. I'd say four to five of them are recently filed and
6 so we're waiting for the appellant to put in their initial
7 brief. So they're at different stages at this point in time.

8 THE COURT: Okay. All right, anything else for today?

9 MR. WISHNEW: That's it, Your Honor.

10 THE COURT: Thanks very much.

11 MR. WISHNEW: Thanks so much for your time.

12 THE COURT: Thank you, Ms. Richards.

13 Mr. Newton, thank you.

14 Thank you.

15 (Whereupon these proceedings were concluded at 10:56 AM)

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2 C E R T I F I C A T I O N

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4 I, David Rutt, certify that the foregoing transcript is a true
5 and accurate record of the proceedings.

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DAVID RUTT

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Date: October 16, 2015

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